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File No. O. Foreigners
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Subject:—Opinions under the Foreigners Act - 1946

P=7
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File No. O. Foreigners/50 508-A

Gen. 194

CONTENTS.

Legal Department File No.O. Foreigners / 1950.

Sr. No.	R.I. / O.No.	Subject.	Pages.
		Opinions under the Foreigners Act, 1946.	
1.	345-Confl. 24-5-50	Whether Messrs,Pompei Viegas and Martin Pinto born in Goa and who cannot be treated as natural born British subjects can successfully make the claim that they are the citizens of India. ..	1-5
2.	386-Confl. 5-6-1950	Sardesai to challenge the validity of the order. Contentions that he has been residing in India for the last 25 years and domicile in India established —	7
3.	13308 19-9-50	Whether charges for repatriation of Seletzky family can be ~~received~~ recovered from the estate of Shri M.D.Patit — ...	9
4.	886-Confl. 6-12-50	Whether the deportations orders bearing roneod signature are valid and can be served on the persons concerned — ...	11-12.

MRP.
8/6/56.

11/6
K.S.R
11/6

CONFIDENTIAL. R.L.A's Office.

Clause (c) of sub-section (2) of section 3 of the Foreigners Act, 1946, empowers the Central Government to make an order requiring a foreigner not to remain in India or in any prescribed area therein. 'Foreigner' is defined in clause (a) of section 2 to mean a person who —

(i) is not a natural-born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914; or

(ii) has not been granted a certificate of naturalization as a British subject under any law for the time being in force in India; or

(iii) is not a citizen of India.

As Messrs. Pompei Veigas and Partin Pinto have been born in Goa they cannot be treated as natural-born British subjects. It is presumed that no certificate of naturalization as a British subject has been granted to either of them. The only question, therefore, is whether they can successfully make the claim that they are the citizens of India.

2. Under article 5 of the Constitution a person though he may not be born in the territory of India but who has the domicile in the territory of India and has been ordinarily residing in that territory for not less than 5 years immediately preceding the 26th January 1950 acquires the status of a citizen of India. Articles 10 and

and 11 of the Constitution contemplate that Parliament should make a Law regulating the right of citizenship. Such law has not been made so far.

3. If an order under the Foreigners Act is made and is challenged in a Court the burden of proving that the person is a foreigner, that is of proving that he is not a citizen of India will lie upon the Government.

4. In this case it is an acknowledged fact that Mrssrs. Pompei Veigas and Martin Pinto have been residing in Bombay for a number of years: in other words the requirement of clause (c) of article 5 of the Constitution is fulfilled. We will have, therefore, to prove that they are not domiciled in India. No procedure has been laid down as to how domicile is to be proved. It all depends upon the intention of the person concerned of permanently residing in India and that intention is to be gathered from a number of circumstances. (See R.L.A's Opinion No.4623 dated the 6th May 1947).

5. In the case of Shri Pompei Veigas we have only two circumstances to fall back upon viz., of his being born in Goa and of his having travelled with a Portuguese Passport as late as 1947. These are conclusive proofs that his nationality continued to be Portuguese till 1947, although he may have resided in Bombay since 1923. But nationality is not the same thing as domicile and it may be open to Shri Pompei Veigas to maintain that he had the intention of permanently residing in India. Before, therefore, we treat him as a foreigner, further evidence should be

collected —

collected regarding his ancestral home, his visits thereto, the ownership of any property in Goa, his general connections with Goa and the business which is responsible for his residence in Bombay. It is upon a consideration of all these circumstances that we may be able to show that he has not acquired domicile in India, and therefore, cannot claim citizenship of India.

6. In the case of Shri Martin Pinto no circumstance excepting that of his birth in Goa is available on record. Enquiries as in the case of Shri Pompei Veigas should be made and further evidence collected for the purpose of ascertaining whether he, too, has or has not acquired Indian Domicile.

Sd. P.M.Lad
23/5
Remembrancer of Legal Affairs.

U.R.to Pol.& S.D.,No.345-Confl., dated the 24th May 1950.

MRP.
8/6/56.

CONFIDENTIAL. Office of the R.L.A.

Attention is invited to R.L.A's Opinion No.345-Confl., dated 24-5-1950. Although the Order may have been made before the commencement of the Constitution, inasmuch as it is sought to be enforced after the Constitution came into force it will be open to Mr.Sardesai to challenge the validity of that Order on the ground that he is not a foreigner but a citizen of India. It is presumed that he is born in Goa. It is also contended by him that he has been residing in India for the last 25 years. That fact will have to be verified. Even if that fact be found true the further fact of his domicile in India will also have to be established. If there be material to prove both residence and domicile it would be difficult to resist the claim for citizenship.

Sd. P.H.Lad

Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.386-Confl., dated 5th June 1950.

MRP.
8/6/56.

Office of the R.L.A.

Whether charges for ~~regis~~ repatriation of Seletzky family can be recovered from the estate of Shri.M.D. Petit.

Under the bond Government is entitled to reimbursement of the repatriation charges from Shri Petit and his successors. Consequently Government can claim the repatriation charges from the heirs of the late Shri Petit out of the estate inherited by them. The vague assestion of the Solicitors in their letter at page 105 that the liability does not survive appears to be without any substance.

Sd. P.M.Lad
18/9
Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.13308, dated the 19th September 1950.

MRP.
8/6/56.

Legal Department.

855-Confl. dt. 2-12-50.

Submitted with reference to P.& S.D. Office note at pp.163-164 ante. Please see the orders of deportation (pp.141-157 ante) made by the Government of India under section 3 of the Foreigners Act, 1946. These orders only bear the roneod signature of the Deputy Secretary. The P.& S.D. has therefore raised the question whether the orders bearing roneoed signature are valid and can be served on the persons concerned.

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Id. D.W.D.,
4/12.

R.L.A.
~~A.L.R.~~

Reply:-

It is necessary that the order which is to be actually served on the person to be deported should bear the signature in original of the officer concerned.

Sd. P.M.Lad
5/12

U.R.to P.& S.D.,No.886-Confl.,dated 6-12-1950.

MRP.
8/6/56.